

MINUTES

HOUSE SELECT COMMITTEE ON CERTIFICATE OF NEED PROCESS AND RELATED HOSPITAL ISSUES

Wednesday, September 14, 2011

1:45 p.m.

Room 544, Legislative Office Building

The House Select Committee on Certificate of Need and Related Hospital Issues met on Wednesday, September 14, 2011, at 1:45 p.m. in Room 544 of the Legislative Office Building. Representatives Alexander, Boles, Collins, Current, Hollo, Randleman, Steen, and Torbett attended.

Representative Steen presided. He welcomed the Committee members.

PRESENTATIONS

Shawn Parker, Research Division, NCGA, gave a presentation on the Committee Charge (see attached).

Barbara Riley, Research Division, NCGA, Amy Jo Johnson, Research Division, NCGA, and Jan Paul, Research Division, NCGA, gave a presentation on State Health Services Planning and Certificate of Need (see attached).

Representative Steen gave overview of Constitutional changes and asked for questions.

Representative Torbett: If you could expand on the last slide on page 39 where it references 1993-7, the term any person?

Amy Jo Johnson: What happened in 93, prior to that it really was just health service facilities that were needing to apply for a certificate of need for their institutional health services, and in 93 it opened it up to any person, that would also involve physicians and providers and not just the facilities themselves, so it really broadened that category of people that would be going through the certificate of need process.

Representative Current: The appointment of the SHCC members, is that by the governor, you mentioned the chair and so forth?

Janice Paul: Yes, the governor appoints all 29 members of the SHCC as well as designates which member is going to be chair and co-chair and then they are divided up into different committees, they'll have an acute care committee, they have various committees that report to

the council, then the council makes recommendations and decisions that regulate the form of the plan.

Representative Current: Are they required to fill out conflict documents and so forth?

Janice Paul: Based on my understanding, from prior discussion with the department, they would be subject to the same ethics and conflict requirements as the general assembly.

Representative Current: Can the governor override any decision the committee makes?

Janice Paul: The governor has to approve the plan. If the governor does not approve the plan, then it goes back to the committee for re-keying of the plan to meet with the governor's specifications.

Representative Current: If there is a decision made by the committee for or against issuing a certificate of need, can the governor override that?

Barbara Riley: No, the governor would not be able to override. If somebody wants to object, it goes up through the legal process, that is not to say, many of these cases are settled to the extent that there are settlement agreements between the department and provider involved. I would assume that decisions are made at that level. The decision itself is appealed through the office of administrative hearings, then the court of appeals. It cannot be unilaterally changed by the governor.

Shawn Parker, Research Division gave presentation on COPA (see attached)

Representative Steen asked for questions.

Representative Steen: Is the COPA review process mostly done through the attorney general's office or through the department?

Shawn Parker: What is prescribed is that either of those offices can initiate a review. I believe that the biennial report is where the review takes place and that would require public comment and notice that the report has been provided.

Representative Steen: The general assembly changed some things this year and was COPA reviewed by the general assembly since its conception back in the 90's?

Shawn Parker: As far as the action from this body beyond initial enacting of the statute, there was an adjustment in 1998. There was an additional adjustment which was more technical, in 2005, related to the department of health and human resources changed to the department of

health and human services, but as far as what this body controls, they do not take part of it, they do have the authority to change the statute, which would then govern the review process but beyond being members of the public or having influence within the other two bodies, this body did not review the COPA or take any official action towards it.

Representative Steen: The physician employment cap was changed this year, is that right?

Shawn Parker: Yes, the third amendment amended it from 20 to 30% and may have had a few other adjustments as well.

Representative Collins: My question is this, back on page 2, if we are going to have an institution operating under a COPA, from which I understand that we have one operating in the state, the federal government will allow us to basically bypass their antitrust laws as long as we meet a two prong test, one of which is to provide active supervision and is our reading a review every two years considered sufficient to provide that supervision or are we doing other supervisory activities that we didn't bring out in this rather brief review?

Shawn Parker: I don't believe the active supervision prong has not been challenged, again, as the statute reads, it has the requirement of every two years, and it has the ability to review at any time. There has not been any federal antitrust challenge to the one in operation yet.

Representative Boles: How many employees oversee COPA?

*Shawn Parker: Defer to department to answer.

Representative Alexander: Has any other hospital tried for COPA?

*Shawn Parker: Verify with Mr. Stewart, Mission Hospital is the only application.

*Representative Current: 1. what is the cost and percent of increase in cost of healthcare in the states that have CON versus the states that do not?

*2. What is the future projection of CON & COPA if the affordable healthcare act becomes law?

3. If someone is granted a CON can they give some beds to someone else or work out a deal?

Barbara Riley: No.

Representative Current: In other words CON would have to approve whole deal?

Barbara Riley: Yes.

Representative Steen adjourned the meeting, noting that the committee is next scheduled for October 6, 2011 at 10:00 a.m. in room 544.

*Answers to above questions attached.

Representative Fred Steen, Co-Chair Presiding

Viddia Torbett, Clerk

Representative John Torbett, Co-Chair